

In the Matter of)
)
Telecommunications Services)
For Individuals with Hearing and Speech) CC Docket No. 03-123
Disabilities, and the Americans with)
Disabilities Act)
)

Julie Miron, Executive Director
1505 W. Court St. Flint, MI 48503

May 31, 2007

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SUMMARY

Communications Access Center for the Deaf and Hard of Hearing, Inc. (CAC) urges the FCC to adopt a rate methodology for Internet Protocol Relay services (IP) that fairly reimburses providers for their reasonable costs of providing this service, including costs associated with research and development and expenses attributable to outreach and marketing; promotes competition; and ensures compliance with the Americans with Disabilities Act's (ADA's) mandates for functional equivalency.

CAC urges the FCC to reject NECA's proposed rate for IP Relay for 2007 – 2008. The proposed rate has been derived using incomplete cost data, and would therefore result in severe under compensation of most, if not all, IP Relay providers.

CAC proposes instead to establish a rate for IP Relay provision similar to traditional relay services that would adequately compensate provider costs. CAC also encourages the FCC to establish this rate for a three-year period to ensure stability and predictability. CAC urges the Commission to adopt a rate methodology that is reasoned, consistent, and would:

- Fairly and reasonably compensate each provider;
- Provide a competitive market that would deliver functional equivalency as the Deaf and Hard of Hearing increasingly move to mobile communications utilizing IP relay in all its forms just as the hearing population moves to mobile communications (predominately cell phones);
- Provide for continued innovation that would allow consumers to receive the benefits of technological advances. (50% of all IP relay minutes are now Instant Messaging minutes from technological innovations such as Sidekicks, Blackberrys, etc.)

- Provide consistency for providers over a period of three years, after which the FCC and NECA can re-evaluate costs; and
- Eliminate the need for the FCC and NECA to annually engage in inefficient long and drawn-out processes to calculate the IP relay rate.

Before the
Federal Communications Commission
Washington DC 20554

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**COMMENTS OF COMMUNICATION ACCESS CENTER FOR THE DEAF
AND HARD OF HEARING, INC. (CAC)**

I. Introduction and Background

CAC hereby submits comments in response to the proposed provider compensation rate for Internet Protocol (IP) relay service submitted by the National Exchange Carriers Administration (NECA) to the Federal Communications Commission (FCC) on May 1, 2007.¹ CAC serves as a provider of IP relay and Video Relay Service (VRS) throughout the United States and territories.

From the inception of IP relay as an approved method of reimbursable communication for our Deaf and Hard of Hearing citizens, rate methodology has been characterized by the failure to follow uniform and transparent cost recovery policies. The lack of transparency and policy reversals that have

¹ Payment Formula and Fund Size Estimate for the Interstate Telecommunications Relay Services Fund for the July 2007 through June 2008 Fund Year (May 1, 2007) (NECA Filing). The FCC invited comments on the NECA filing in a public notice released on May 2, 2007, DA 07-1978.

consistently occurred have left providers guessing as to what will be allowed as compensation for IP relay services. Unfortunately, this year has been no different.

II. Reimbursement Timing Change to Providers

According to the NECA 2007 – 2008 Fund Filing, NECA is proposing to change the date providers would be reimbursed.² CAC understands the rationale for the change from the historic payment timing that provided reimbursement to all providers on the 20th working day of each month following the month in which the service was provided. This timing has indeed resulted, at various times, with funds left in a no interest earning position for several days. The proposed change to the last Friday of each month results in a net increase in the delay of payment for the providers. Under the present timing of payments, a provider has as many as 58 days and as little as 29 days from incurring costs associated with providing the service and receiving payment. Under the proposed change, if in effect throughout 2007, would result in 5 days of delay to providers. The increase in this payment timing would increase the cost to providers due to the additional time use of money. Of course, this would be expected, as any delay that would increase interest earnings from a payor would result in loss of interest earnings to the payee.

² NECA 2007 – 2008 Fund Filing May 1, 2007 submission, page 8.

III. Cost Disallowance for IP Unreasonable and Inappropriate

Of tremendous concern is the arbitrary and capricious decision to eliminate the subcontractor cost from the cost submission of a provider due to the fact the subcontract was not yet signed at the time of submission.³ This decision, at its core, assumes that because the subcontract was not signed, the provider could provide relay with no cost for the subcontractor function. Prior to IP relay service provision by this provider, either the subcontract would be signed, in which case the cost would be incurred; or the provider would hire the staff, and incur the costs for that function. Either way there is a cost associated with the service provision that needs to be included in the cost data analysis. Inclusion of these costs would have increased the cost submission by \$15,600,000.

IV. Costs Associated with Research and Development Should be Compensable

Under the ADA, the FCC is charged with promulgating regulations that encourage “the use of existing technology and do not discourage or impair the development of improved technology.”⁴ Consistent with this directive, until a few years ago, the FCC not only permitted, but also

³ NECA 2007 – 2008 Fund Filing May 1, 2007 submission, page 20.

⁴ 47 U.S.C. §225(d)(2).

encouraged TRS research and development, and regularly allowed the recovery of relay costs associated with these efforts.

It was R&D lead by William McClelland that made Internet Protocol relay possible in the first place and consequently has enhanced the lives of so many deaf Americans. The continued innovation of Instant Messaging Relay allowed our deaf citizens to access mobile communications for the first time and thereby providing the equivalent of a hearing person's cell phone.

OneNumber development has created the ability of a deaf person to have a single number that any business, health care professional, employer or friend can call without the tedious process of 711. The deaf person can answer the call by any relay method they might choose dependent upon location or if the deaf person is not available, a trained Communication Assistant takes a message and it is forwarded by email. Now, the Deaf have the equivalent access of voice mail.

By removing R&D from relay costs that are compensable, the present funding scheme has eliminated much of the incentive to research and invest in new and innovative service relay features. Without the ability to fund development for technical solutions, smaller providers are particularly hard hit. Even worse, the FCC's decision to disallow reimbursement for R&D expenses is hindering the ability of CAC and other providers to explore viable solutions to mandatory minimum standards which presently exist, but which are temporarily waived. The most notable of these standards is the handling

of emergency calls. CAC urges the Commission to reimburse a provider's efforts to develop technologies that are needed to meet temporarily waived relay standards or to otherwise achieve functional equivalency.

V. Costs Associated with Outreach and Marketing Should Be Compensable

Until the past few years, the FCC has compensated outreach and marketing costs, understanding these to be necessary to expand public and user awareness of relay services, and therefore critical to fulfilling the ADA's goal of functional equivalency.

The FCC has consistently and repeatedly affirmed "public access to information regarding the availability, use of service, and means of access, is critical to the implementation of TRS."⁵ In March of 2000, the FCC explained "TRS was designed to help bridge the gap between people with hearing and speech disabilities and people without such disabilities with respect to telecommunication services. The lack of public awareness prevents TRS from achieving this congressionally mandated objective."⁶

⁵ Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, Report and Order and Request for Comments, CC Dkt. No. 90-571, FCC 91-213 (July 26, 1991, ¶26. 47 C.F.R. §64.604(c)(3)

⁶ *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Dkt.8-67, FCC 00-56, 15 FCC Rcd 5140 (March 6, 2000), ¶105. The Commission confirmed the FCC's 711 order "[t]o the extent costs of education and outreach are attributable to the provision of interstate TRS, ... relay providers should include these costs as part of their annual data report of their total TRS operating expenses." Use of N11 Codes and Other Abbreviated Dialing

Even though the Commission rejected the concept of a NECA funded national outreach program, the Commission did make it clear that provider costs for reasonable outreach efforts were compensable costs.⁷

Unlike other sections of the ADA that were the center of major outreach efforts conducted by many Agencies throughout the country, the relay provisions have never had the benefit of a comprehensive nationwide outreach program. Consequently, many individuals who are potential TRS users remain without knowledge of the existence of these services or the ways that this form of communication access can enhance their lives. CAC urges the Commission to not penalize providers who are requesting the means to provide such outreach.

Likewise, the FCC should not exclude the costs for “branded” marketing. This marketing give providers incentives to invest in innovations and share information about their service features with consumers. If “branded” marketing is excluded this will not only hurt competition, it will not allow the TRS consumers to select the services and features that best suit their individual needs.

Arrangements, Second Report and Order, CC Dkt. No. 92-105, FCC 00-257 15, FCC Rcd 15188, (August 9, 2000), ¶61.

⁷ *Telecommunications Relay Services and Speech-toSpeech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, CC Dkt. No. 90-571, CC Dkt. No. 98-67, CG Dkt. No. 03-123, 19 FCC Rcd 12475 (June 30, 2004) (2004 Report & Order), ¶ 95.

CAC feels the suggestion to pull the costs from the per minute rate and create an equal distribution to all providers may be a solution to allow providers equal opportunity to provide outreach and marketing to the community.

VI. Traditional Relay and IP Relay costs similar

At its heart, many providers process both traditional relay (TRS) and IP relay and the costs are essentially the same. Facility costs, staffing, systems and technology, taxes, etc. are the same. IP relay does add additional costs in fraud control, as the providers increase their technology and staffing to eliminate this problem that has erupted throughout the World Wide Web. CAC and its partners have spent considerable time and effort to reduce fraud to less than one percent of total IP relay processed minutes. The proposed rates would have traditional TRS reimbursed at a rate 45% to 68% greater than the proposed IP relay rate.⁸ CAC urges the FCC to reject NECA's proposed rates as these rates have been driven down by the decision to eliminate an estimated \$15,600,000 in costs. This decision eliminates nearly 15% of the total cost of all providers for the entire year for all IP minutes processed. CAC proposes that the FCC establish a rate at least equivalent to traditional relay services to adequately compensate for provider costs. CAC also urges that the rates established using this approach remain in effect for at least a three-year period, to ensure stability and predictability.

⁸ NECA 2007 – 2008 Fund Filing May 1, 2007 submission.

VII. Conclusion

In the 2006 FNPRN the FCC stated their interest in making certain that:

“the use of TRS cost recovery methodologies and procedures fairly and predictably compensate providers for the reasonable costs of providing service [in a way that] will not only be faithful to the intent of the ADA, but will also benefit all consumers.”⁹

CAC applauds this objective and with the increase in the use of various forms of TRS, including IP relay, this confirms the importance that TRS has played in the lives of the deaf community.

CAC urges the Commission to adopt a rate methodology for the 2007 – 2008 Fund Year that is reasoned, consistent and would fairly compensate each provider. This would continue to provide a competitive environment, provide for continued innovations, and allow for consumer education. CAC proposes the FCC to adopt a rate for IP relay similar to the rate proposed by NECA for traditional relay and to include the costs for research and development, and outreach and marketing.

Respectfully submitted,

/s/

Julie Miron, Executive Director
Communication Access Center for the Deaf
and Hard of Hearing, Inc.
1505 W. Court St.
Flint, MI 48503

⁹ 2006 FNPRM at ¶8.

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